IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O NO.57-M of 2004 and
C.M. No.17127-CII of 2006

DATE OF DECISION: 20.09.2006

Naresh Kumar

.....Appellant

versus

Sarabjit Kaur @ Vandana

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: None for the appellant

Mr.Jasbir Rattan, Advocate for the respondent

..

JUDGMENT:

This is husband's appeal against the judgment and decree dated 23.10.2003 passed by Additional District Judge, Ludhiana, vide which his petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter to be referred to as 'the Act') has been dismissed.

The facts, in brief, are that appellant/husband Naresh Kumar filed a petition for divorce under Section 13 of the Act on the ground of cruelty. The marriage between the parties was solemnized on 18.1.2000 at Tehsil Malerkotla according to Hindu rites and ceremonies. The parties lived and cohabited together at Ludhiana and a son was born out of the wedlock on 10.12.2000. According to husband, the respondent-wife had always been insisting that property be transferred in

her name and her brother Inderjit be allowed to live in the matrimonial home. Since the husband did not agree to the proposal of the respondent-wife, she started quarreling even over petty matters. She refused to discharge the matrimonial duties. She made the husband's life a hell and treated him with cruelty. All the efforts made by the husband to persuade the wife failed. Ultimately, on 8.8.2006 the respondent-wife left the matrimonial home along with costly clothes and ornaments. The husband further pleaded that he also convened Panchayat, but the wife refused to join him.

The divorce petition was contested by the wife. She pleaded that all the allegations made against her are false and frivolous. According to her, the husband and his family members are greedy persons. They asked the respondent's father to give cash in lieu of the dowry articles which were not of good quality, though her father had paid a sum of Rs.1,50,000/- in cash to the husband at the time of marriage. On wife's showing her inability to bring more money, the attitude of the husband became aggressive. It was further stated that husband and his family members used to misbehave with her and they further made demand of Rs.50,000/-. When her father expressed his inability to meet the demand of the husband, she was turned out of the matrimonial home. The respondent-wife further pleaded that her father had convened Panchayats in June 2001 to rehabilitate her in the matrimonial home, but the husband refused to compromise the matter.

After considering the evidence led by the parties in support of their respective cases, the learned District Judge, dismissed the petition filed by the husband for decree of divorce, with costs as per judgment and decree dated 23.10.2003.

Aggrieved against the aforesaid order of the trial Court, the husband filed the present appeal. During the pendency of the appeal, this Court passed the following order on 14.2.2006:-

> "It is the conceded position between the learned counsel for the parties that an amount of Rs.700/- per month had been granted by the learned trial court as maintenance amount during the pendency of proceedings before it.
>
> After hearing the learned counsel for the parties, it is directed that an amount of Rs.1,000/- per month shall be paid by the husband to the wife. Additionally, an amount of Rs.5,000/- is fixed as litigation expenses. The amount of maintenance shall become payable with effect from January 1, 2005. It is further directed that all the arrears of maintenance and litigation expenses shall be paid by the husband to the wife within a period of two months from today. In future also, the maintenance amount shall be paid regularly by the husband to the wife by 10th day of each month. In case the arrears of maintenance as well as litigation expenses are not paid within the stipulated period or in

case of two consecutive defaults in regular payment of maintenance amount, the appeal of the husband shall be liable to be dismissed for non prosecution.

C.M. stands disposed of accordingly."

A perusal of the aforesaid order clearly shows that the appellant was directed to pay an amount of Rs.1,000/- per month towards maintenance pendente lite. He was also directed to pay Rs.5,000/- as litigation expenses. It was specifically mentioned in the order that the amount of maintenance would be payable with effect from January 01, 2005 and appellant was directed to pay all the arrears of maintenance and litigation expenses to the respondent-wife within a period of two months from the date of the order. The appellant-husband was further directed to regularly pay the amount of maintenance in future by 10th day of each month. Lastly, it was specified that in case the arrears of maintenance as well as litigation expenses are not paid within the stipulated period or in the event of two consecutive defaults in regular payment of maintenance, the appeal would be liable to be dismissed for non-prosecution.

During the pendency of proceedings in the present appeal, the appellant-husband has filed an application for grant of decree of divorce on the ground of irretrievable breakdown of marriage. It is stated therein that parties are living apart since August 2000. There is no cohabitation for the last six months nor is there any possibility of reconciliation and, therefore, the appeal be accepted.

In reply to the said application, the respondent-wife has stated that since the appellant-husband has failed to comply with the order passed by this Court dated 14.2.2006, therefore, the application is not maintainable and the same is liable to be rejected on this ground alone.

Learned counsel for the respondent, on instructions from the respondent, who is present in Court, states that in spite of the aforesaid order passed by this Court, the appellant has not paid even a single penny to the respondent-wife, what to talk of regularly paying the amount of maintenance and litigation expenses. As such, the appellant-husband is not entitled to any relief and the main appeal as well as application are liable to be dismissed.

I find force in the contention raised by the learned counsel for the respondent-wife that non payment of maintenance pendente lite amounts to committing wrong under Section 23 of the Act and, therefore, the appellant-husband is not entitled to decree of divorce on this ground alone. The Apex Court in **Hirachand Srinivas Managaonkar vs Sunanda, 2001(1) Marriage Law Journal, 624,** in somewhat similar circumstances, has held that refusal to pay maintenance by the husband to the wife, as ordered by the court, amounts to committing a wrong within the meaning of Section 23 of the Act and trial court was held to be justified in declining the prayer of the husband for

dissolution of marriage. It was further held that while considering the matter regarding divorce between the parties, non-payment of maintenance allowance is one of the relevant consideration.

On merits also, there is no cogent evidence that marriage between the parties has irretrievably broken down. The husband has unilaterally asserted that the marriage has irretrievably broken down, whereas, the wife has categorically pleaded that chances are still there to effect compromise between the parties.

In view of the above, I do not find any merit in this appeal. The appeal as well as application stand dismissed.

September 20, 2006 **(NIRMAL YADAV)**
pc **JUDGE**

Note:- Whether to be referred to Reporters - YES/NO.